REMARKS

Claims 22-27 and 29-48 are now pending in this application for which applicants seek reconsideration. **Please note that claims 1-21 were canceled when this application was filed. See the divisional application transmittal.** Accordingly, all objections/rejections relating to these claims are moot.

Amendment

Claim 24 now incorporates now canceled claim 28. Claims 31-34 have been amended to remove the antecedent basis problem, by changing "the" to --a--. Figs. 13 and 14 also have been corrected as proposed by the examiner. No new matter has been introduced.

Double Patenting Rejection

Claims 22-32 and 43-48 were rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 1 and 14 of USP 6,674,126 (parent application). Applicants traverse this rejection because this divisional application resulted because the present examiner restricted the pending claims in the parent application. The examiner should recall restricting claims 17 and 21-48 from claims 1-16 and 18-20 in the parent application. Since the examiner restricted the pending claims in the parent application, the examiner cannot reject them based on the claims of the parent application:

> When a double patenting rejection is appropriate, it must be based either on statutory grounds or nonstatutory grounds. The ground of rejection employed depends upon the relationship of the inventions being claimed. **Generally, a double patenting rejection is not permitted where the claimed subject matter is presented in a divisional application as a result of a restriction requirement made in a parent application under 35 U.S.C. 121.** [MPEP § 804, section II, emphasis added].

Accordingly, the double patenting rejection is improper.

Art Rejection

Claims 21, 24, 26, 30, 32, 34, 36, 38, 44, 46, and 48 were rejected under 35 U.S.C. § 102(e) as anticipated by Minato (USPA 2003/0132450, now USP 6,821,824). Applicants traverse this rejection because Minato is not a viable prior art against the present application.

The present invention is a divisional of application SN. 10/073,671, which was filed in the U.S. on February 11, 2002. Minato HAS NO § 102(e) date because it was filed under 35 U.S.C. § 371, as a national stage application, and the WO02/067333 was not published in English (but in Japanese). As it was not published in English, Minato simply has no § 102(e) date:

> (B) If the international application was filed on or after November 29, 2000, but did not designate the United States or **was not published in English under PCT Article 21(2), do not treat the international filing date as a U.S. filing date for prior art purposed under 35 U.S.C. 102(e). In this situation, do not apply under 35 U.S.C. 102(e)** the reference as of its international filing date, its date of completion of the 35 U.S.C. 371(c)(1), (2) and (4) requirements, or any earlier filing date to which such an international application claims benefit or priority. The reference may be applied under 35 U.S.C. 102(a) or (b) as of its publication date, or 35 U.S.C. 102(e) as of any later U.S. filing date of an application that properly claimed the benefit of the international application (if applicable). [MPEP § 1896, section II(B), emphasis added].
>
> Examiners should be aware that although a publication of, or a U.S. patent issued from, an international application may not have a 35 U.S.C. 102(e) date at all, or may have a 35 U.S.C. 102(e) date that is after the effective filing date of the application being examined (so it is not "prior art", the corresponding WIPO publication of an international application may have an earlier 35 U.S.C. 102(a) or (b) date. [MPEP § 1896, section II(B), last paragraph].

See also the attached front cover page of the Minato patent. The earliest prior art date available for Minato is the PCT publication date, which is August 29, 2002. This date comes after the effective filing date (February 11, 2002) of this application. Accordingly, Minato is not a viable prior art.

Claims 24, 26, 30, 40, 43, 44, and 46 were rejected under 35 U.S.C. § 102(b) as anticipated by Tihanyi (USP 6,184,555). Applicants submit that this rejection too has been rendered moot since claim 24 now incorporates claim 28, which is not taught by Tihanyi.

Conclusion

Applicants submit that claims 22-27 and 29-48 distinguish over Tihanyi and are in condition for allowance. Should the examiner have any issues concerning this reply or any other outstanding issues remaining in this application, applicants urge the examiner to contact the undersigned to expedite prosecution.

Respectfully submitted,

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